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1 WENDELL BEDFORD, PLAINTIFF PRO SE
2 3377 GOLDRUSH COURT
3 CINCINNATI, OHIO 45211
4 (513) 389-0557
5

6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF OHIO
8 WESTERN DIVISION
9 AT CINCINNATI
10

11 WENDELL BEDFORD,
12 Plaintiff,
13 vs.
14 CENERGY CORPORATION,
15 Defendant

Case No.: C-I-01-861

JUDGE BECKWITH
MAGISTRATE JUDGE PERELMAN

OBJECTION
TO MAGISTRATE'S REPORT AND
RECOMMENDATIONS

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20
21 Comes the Plaintiff and for his Objection to the
22 Magistrate's Report and Recommendations submits herewith a
23 supporting Memorandum.
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25

OBJECTION TO MAGISTRATE'S REPORT
AND RECOMMENDATIONS

1 Respectfully submitted,

2
3 Wendell Bedford

4 WENDELL BEDFORD, PRO SE
5 3377 GOLDRUSH COURT
6 CINCINNATI, OH 45211
7 (513) 389-0557

8 DATED: 3-24-04

9
10 CERTIFICATE OF SERVICE

11 The foregoing was delivered via 1st class U.S. mail and to the
12 address below on this 24 day of March, 2004.

13
14 JILL T. O'SHEA (0034692)
15 ATTORNEY FOR DEFENDANT
16 THE CINCINNATI GAS & ELECTRIC
17 COMPANY
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25 Wendell Bedford
WENDELL BEDFORD

OBJECTION TO MAGISTRATE'S REPORT
AND RECOMMENDATIONS

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13 vs.
14 CENERGY CORPORATION,
15 Defendant

) Case No.: C-I-01-861
)
)

) JUDGE BECKWITH
) MAGISTRATE JUDGE PERELMAN
)

) MEMORANDUM IN SUPPORT OF THE
) OBJECTION
) TO MAGISTRATE'S REPORT AND
) RECOMMENDATIONS
)

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18 * * * * *
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21 Comes the Plaintiff and for his Objection to the
22 Magistrate's Report and Recommendations states as follows:
23

24 Plaintiff has previously stated the case at bar in his
25 Memorandum In Support Of Plaintiff's Response And Objection To

MEMORANDUM IN SUPPORT OF
OBJECTION TO MAGISTRATE'S
REPORT AND RECOMMENDATIONS

1 Defendant's Motion For Summary Judgment and, therefore, will
2 address only the Magistrate's misstatements and errors.
3 Plaintiff notes that Magistrate Judge Sherman presided over this
4 case from its inception but that the Report and Recommendations
5 were submitted by Magistrate Judge Perelman.

6 Plaintiff humbly suggests that this particular Magistrate
7 went through an analysis of the law and standard for summary
8 judgment, but made recommendations inconsistent therewith.

9 The Magistrate's Report notes in a footnote on page 3,
10 that the "Court ruled that the two white employees were
11 similarly situated.." but then notes, "...only for the purposes of
12 discovery..." Plaintiff brings this to His Honor's attention to
13 emphasize how an inappropriate standard has been applied to him
14 throughout this case. Plaintiff was seeking records to
15 demonstrate the difference in treatment between him and the
16 white employees. Instead of applying the standard "is the
17 material sought relevant or calculated to lead to relevant
18 material," the Court made such a comparison and analysis that
19 the standard for discovery approached beyond a reasonable doubt.
20 Similarly, this Report holds Plaintiff to an almost impossible
21 standard. Plaintiff is almost required to prove his claims at
22 this stage (which one might reasonably conclude that he has).

23 The Magistrate Report concedes to Plaintiff that all
24 requirements to establish a claim and defeat summary judgment
25 have been met, excepting "the fourth prong, that he was treated

1 differently than other similarly situated employees..", , the
2 Magistrate's Report @ page 3. The Magistrate's Report then goes
3 on to resolve all doubt against Plaintiff, accept as true all
4 statements of the Defendant, view all evidence in a light most
5 favorable to Defendant and ignore all evidence presented by
6 Plaintiff.

7 At page 7 of the Magistrate's Report, it states, "...
8 The uncontradicted evidence presented by defendant shows that
9 the result of the samples submitted by plaintiff were
10 inconsistent, leading defendant to suspect that plaintiff had
11 tampered with the drug testing process. (See doc. 36, att. E,
12 exs. C-E,H). This being so, plaintiff's employment was
13 terminated on the grounds that he submitted an adulterated
14 sample-not on the ground that he submitted a positive sample.
15 (See id., att. A, ex 29).

16 The Magistrate's Report accepts as "uncontradicted," the
17 evidence presented by Defendant concerning the urine samples.
18 But there is no evidence presented concerning the urine samples
19 that could prove Plaintiff tampered with the testing process,
20 and the Magistrate Report concedes as much, Stating "the
21 defendant suspected" Plaintiff. "This being so, plaintiff's
22 employment was terminated..." Yet, the Magistrate's Report finds
23 no fault in terminating Plaintiff because the Defendant
24 "suspected", not had proof, that Plaintiff had adulterated a
25 urine sample. The Magistrate's Report actually manufactures a

MEMORANDUM IN SUPPORT OF
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1 justification on behalf of the Defendant, stating @ pages 7 & 8,
2 "...plaintiff's employment was terminated on the ground that he
3 submitted an adulterated sample-not on the ground that he
4 submitted a positive sample..." But the Defendant, in fact, has
5 stated that Plaintiff's termination was based upon acts that the
6 Defendant arbitrarily concluded constituted a "failure to
7 submit." *emphasis added*

8 Plaintiff emphasizes this point to His Honor as it is
9 especially relevant with respect to one Ms. Mary Kuhl; and it
10 further demonstrates how the Magistrate's Report strains to be
11 in Defendant's favor.

12 At page 8 of the Magistrate's Report, it states,
13 "...uncontroverted evidence in the record shows that the
14 violation by the white female employee who left the testing
15 facility did not involve an adulterated sample, and was not of
16 the generalized nature as presented by plaintiff. Rather, the
17 evidence shows that after her failure to produce a sufficient
18 sample she was told to drink some liquid and to make another
19 attempt..." But the Magistrate's Report fails to mention that the
20 white female employee's sample which was not sufficient was not
21 tested because it fell outside government standards, while
22 Plaintiff's sample, which fell outside government standards
23 because it had cooled from being left standing in an air-
24 conditioned room, was; therefore, it could not be determined
25 whether or not her sample was adulterated.

MEMORANDUM IN SUPPORT OF
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1 In any event, she fled the facility instead of submitting
2 another sample; and again straining to find in the Defendant's
3 favor, the Magistrate's Report notes that "she ...left...without
4 being informed that she could not leave...", as if that justified
5 her failure to submit. The Report then casually states, "Under
6 defendant's drug policy, she was disciplined for a refusal to
7 submit to testing..."

8 Plaintiff was **FIRED** for an alleged refusal to submit to
9 testing.

10 The Magistrate's Record addresses the white male. At page
11 8 it is noted, "...Similarly, defendant's evidence is that the
12 second violation by the white male employee identified by
13 plaintiff did not involve an adulterated sample..." The Report
14 then notes the drug was illegally obtained. But Magistrate
15 Sherman noted the policy language provides in pertinent part,
16 defendant's (Smith) second violation "will result in discharge"
17 (SeeDoc. CG&E01184atB4. The Magistrate's Record casually notes,
18 "...the employee was disciplined, but not discharged..."

19 Plaintiff was **FIRED**.

20 The Magistrate Report @ pages 8-9 states,"...The record
21 also contains evidence that a white male employee who submitted
22 an allegedly adulterated sample, which would place him in the
23 similarly situated category did not receive more favorable
24 treatment and, like plaintiff, was discharged..." But the Report

1 fails to mention that this male employee had tested positive for
2 banned substances previously.

3 Plaintiff has presented a prima facia case of
4 discrimination, and it is contained within the record;
5 Magistrate Sherman recognized it. This court should as well.
6 This Court should reject the Record and Recommendations of
7 Magistrate Perelman and deny the Defendant's motion for summary
8 judgment.

9 Respectfully submitted,

10
11 Wendell Bedford
12 WENDELL BEDFORD, PRO SE
13 3377 GOLDRUSH COURT
14 CINCINNATI, OH 45211
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